83-1140

No. 83-____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

THE STATE OF ARIZONA, et al.,
Petitioners,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY and
THE SOUTHERN PACIFIC
TRANSPORTATION COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

DOES AN ACT OF CONGRESS, 49 U.S.C. § 11503(c), WHICH AUTHORIZES THE GRANT OF INJUNCTIVE RELIEF AGAINST A STATE, FORECLOSE THE APPLICATION OF TRADITIONAL EQUITY STANDARDS IN THE GRANT OF A PRELIMINARY INJUNCTION AGAINST THE STATE AND ITS COUNTIES IN THEIR COLLECTION OF TAXES?

LIST OF THE PARTIES

The petitioners and defendants below are the State of Arizona, its Department of Revenue, J. Elliott Hibbs, Director of the Department of Revenue, and fourteen of the fifteen counties in Arizona.[1/] The respondents and plaintiffs below are the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Transportation Company, railroads which operate in Arizona.

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1. Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma.

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Respondents.

OPINIONS BELOW

The memorandum decision of the United States Court of Appeals for the Ninth Circuit is set forth in the Appendix. The opinion of the district court is unreported. See Appendix.

JURISDICTIONAL GROUNDS

The decision of the United States Court of Appeals was filed on December 23, 1983. No petition for rehearing

was filed or is pending.

This Court has jurisdiction to review the decision on writ of certiorari under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

49 U.S.C. § 11503

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the states, to prevent a violation of subsection (b) of this section . . ..

STATEMENT OF THE CASE

In 1982 both respondents (railroads) brought separate actions against the State of Arizona and the Arizona counties alleging violation of 49 U.S.C. § 11503 (a part of the Railroad Revitalization, Regulatory Reform Act of 1976--4R Act). Jurisdiction of the district court was invoked under 49 U.S.C. § 11503(c). These actions were

consolidated by the district court for preliminary injunction purposes. After a hearing the district court enjoined the collection by the counties[2/] of the second half of the 1982 property taxes. Despite the urging by the petitioners that 49 U.S.C. § 11503(c) does not foreclose the traditional equity standards, and that Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), should control, the district court relied upon Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 869 (9th Cir. 1983), and held that the traditional prerequisities for equitable relief need not be satisfied before a preliminary injunction may be issued under § 11503, and that "[t]he equitable considerations raised by the defendants are, therefore, irrelevant".

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2. Respondents' property taxes are paid to the counties.

Appendix at A-28. A timely appeal was brought to the Court of Appeals for the Ninth Circuit. Notwithstanding petitioners' strenuous argument that Trailer Train was decided without having considered Weinberger, a controlling decision of this Court, the Court of Appeals felt bound by its previous decision and, without mentioning Weinberger, affirmed the district court in a memorandum decision on December 23, 1983 (see Appendix at A-1).

ARGUMENT

REASONS FOR GRANTING CERTIORARI

A. SUMMARY

The Court of Appeals decision here is clearly in conflict with the applicable decisions of this Court[3/] and should be summarily set aside. The

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3. Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982); Hecht v. Bowles, 321 U.S. 321 (1944).

decision, if left undisturbed, would result in district courts, in 4R Act cases, granting preliminary injunctions without a showing of irreparable harm by the railroads and without considering the hardship to the states and their political subdivisions. The resultant disruption to the fiscal well-being of the states and their political subdivisions would be devastating, with grave attendant injury to principles of Equity, Federalism and Comity.

B. WEINBERGER v. ROMERO-BARCELO IS CONTROLLING, AND 49 U.S.C. § 11503(c) REQUIRES THE APPLI-PLICATION OF TRADITIONAL EQUITY STANDARDS.

In Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), this Court held:

> The grant of jurisdiction to insure compliance with a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of

law. TVA v. Hill, 437 U.S. 153, 193 (1978); Hecht Co. v. Bowles, supra, at 329.

These commonplace considerations applicable to cases in which injunctions are sought in the federal courts reflect a "practice with a background of several hundred years of history", Hecht Co. v. Bowles, supra, at 329, a practice of which Congress is assuredly well aware. Of course, Congress may intervene and guide or control the exercise of the courts' discretion, but we do not lightly assume that Congress has intended to depart from established principles. Hecht Co. v. Bowles, supra, at 329. As the Court said in Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946):

> Moreover, the comprehensiveness of its equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.' Brown v.

Swann, 10 Pet. 497, 503
. . . .

456 U.S. at 313.

This Court then carefully distinguished TVA v. Hill, 437 U.S. 153 (1978) by explaining:

> In TVA v. Hill, we held that Congress had foreclosed the exercise of the usual discretion possessed by a court of equity. There, we thought that "one would be hard-pressed to find a statutory provision whose terms were any plainer" than that before us. 437 U.S. at 173. The statute involved, the Endangered Species Act, 87 Stat. 884, 16 U.S.C. § 1531, et seq., required the district court to enjoin completion of the Tellico Dam in order to preserve the snail darter, a species of perch. The purpose and language of the statute under consideration in Hill, not the bare fact of a statutory violation, compelled that conclusion.

Id. at 313, 314.

Applying Weinberger to this case, we must ascertain whether Congress, in the enactment of the 4-R Act, has foreclosed the exercise of the usual discretion possessed by a court of equity.

49 U.S.C. § 11503(c) provides, in relevant part:

> Notwithstanding section 1341 of Title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdictions of the courts of the United States and the States, to prevent a violation of subsection (b) of this section.

49 U.S.C. § 11503 recodified Section 306 of the 4-R Act. Sub-paragraph (2) of § 306 provided:

> Notwithstanding any provision of section 1341 of Title 28, or of the Constitution or laws of any state, the district court of the United States should have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitionary injunctive relief, interim equitable relief, and declarartory judgment as may be necessary to prevent restrain or terminate any acts in violation of this section.

It is readily apparent that in § 11503 the words "injunction" or "injunctive relief" do not even appear.

In § 306, although these words appear, they appear in permissive terms: "as may be necessary to prevent, restrain, or terminate any acts". It is therefore clear that Congress, in providing for federal court jurisdiction and a remedy for the violation of the 4-R Act, was only concerned with making this Act an exception to the Anti-Injunction Act, 28 U.S.C. § 1341.[4/] Therefore, Congress simply intended for the district court to have the power to issue an injunction whenever such a remedy is necessary. By giving the district court this jurisdiction, Congress did not intend to require the district court to issue an injunction in all cases, particularly in the case of granting a preliminary injunc-

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4. Otherwise, the district court cannot entertain such lawsuits. See Fair Assessment v. McNary, 454 U.S. 100 (1981).

tion.[5] The plain language of either version of the statute precludes any contrary conclusion.

Section 11503(c), therefore, is very similar to the statute in Hecht v. Bowles, 321 U.S. 321 (1944). As this Court recognized in Weinberger:

> "The statute at issue in Hecht v. Bowles, 321 U.S. 321, 88 L.Ed. 754, 64 S.Ct. 587 (1944), contained language very similar to § 1319(b) [Federal Water Pollution Control Act]. It directed the Administrator to seek "a permanent or temporary injunction, restraining order, or other order" to halt violations. Id. at 322, 88 L.Ed. 754, 64 S.Ct. 587. The Court determined that such statutory language did not re-

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5. Moreover, should the railroads ultimately prevail, the counties could be required to refund the money paid previously. As this Court said in Sampson v. Murray, 415 U.S. 61, 90 (1974):

> The possibility that adequate compensatory or other corrective relief will be available at a later date, in the course of ordinary litigation, weighs heavily against a claim of irreparable harm.

quire the court to issue an injunction even when the Administrator had sued for injunctive relief."
Weinberger v. Romero-Barcelo, 456 U.S. at 317, n. 12 (emphasis supplied).

The conclusion that Congress did not intend for the 4-R Act to displace traditional equitable criteria in the grant of injunctive relief becomes irrefutable when the legislative history of the 4-R Act is examined. House Rep. 94-725, 94th Cong., 1st Sess. (1975), states:

> Enactment of this section will not necesarily mean the Federal Courts will enjoin all state taxation of rail property which are the subject of complaint. The railroads will still have the burden of demonstrating that discrimination exists. They will also have to make the additional showing that they are entitled to injunctive relief. With respect to the latter issue, the courts in the exercise of equity jurisdiction will balance the adverse impact on the community of granting such relief against the benefits to the carrier from such relief. The federal courts will be able to devise remedies that

> will not be burdensome to the communities involved. (Emphasis added).

The above language makes it crystal clear that not only did Congress not intend to foreclose the application of traditional equity standards in the grant of injunctive relief in 4-R Act cases, it specifically intended that these standards should be applied.

This pertinent legislative history was totally overlooked by the Ninth Circuit Court of Appeals in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (1983) and the Tenth Circuit Court of Appeals.[6/] See also Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 531 F.Supp. 220, 226, n.6 (D.C. Kansas 1981). Although cited

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6. The Trailer Train decision relied upon Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981), a decision which predated Weinberger.

to the Ninth Circuit Court of Appeals by the petitioners, the Court of Appeals chose to mention neither this legislative history nor the Weinberger precedent.

C. CONCLUSION

The Court of Appeals decision in this case, which followed its decision in Trailer Train v. State Board of Equalization, supra, is in conflict with the controlling decision of this Court. Moreover, it is contrary to Congressional intent as evidenced by the pertinent Congressional history. This decision must be summarily reversed. See, e.g., Mason v. City of Biloxi, 385 U.S. 370 (1966).

Alternatively, this Court should summarily vacate the decision with the instruction that the Court of Appeals must consider Weinberger upon remand. Failure to correct this erroneous deci-

sion will result in practically every state and its political subdivisions being subject to the precipitous, harsh and disruptive issuance of injunctive relief against their collection of taxes due from the railroads without any judicial consideration of equity principles.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.	No. 83-2026
Plaintiffs/Appellees,	DC Nos. 82-1279, 82-1792, 82-1298, 83-185
vs.	
THE STATE OF ARIZONA, et al.,	
Defendants/Appellants.	MEMORANDUM*

Appeal from the
United States District Court
for the District of Arizona
Charles L. Hardy,
District Judge, Presiding

Argued and submitted November 18, 1983

Before: DUNIWAY, TIMBERS,** and SKOPIL,
Circuit Judges

* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit.

** The Honorable William H. Timbers, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

Defendants, Arizona and several Arizona counties, appeal the order of the district court granting plaintiffs' request for preliminary injunctions. Issued pursuant to 49 U.S.C. § 11503, the injunctions restrain the defendants from taking any action to collect the second installment of plaintiffs' 1982 property taxes.

We are bound by our decision in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 869 (9th Cir.), cert. denied, 104 S.Ct. 149 (1983). See LeVick v. Skaggs Companies, Inc., 701 F.2d 777, 778 (9th Cir. 1983). In Trailer Train we held that the "traditional prerequisites for equitable relief need not be satisfied before a preliminary injunction may be issued under § 11503." 697 F.2d at 869. The traditional prerequisities were deemed unnecessary because the district court is specifically author-

ized to grant injunctive relief to prevent a violation of section 11503(b). 49 U.S.C. § 11503(c); Trailer Train, 697 F.2d at 869. The court determined that plaintiffs have a strong likelihood of success on the merits and we will not distrub that finding.

The order of the district court is AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.,	
Plaintiffs,	No. CIV 81-1279 PHX CLH
v.	No. CIV 82-1792 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	
SOUTHERN PACIFIC TRANSPORTATION COMPANY,	
Plaintiff,	No. CIV 81-1298 PHX CLH
v.	No. CIV 83- 185 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	

ORDER GRANTING PRELIMINARY INJUNCTIONS

The plaintiff railroad companies having applied for preliminary injunctions restraining the defendants from taking any action to collect the second installment of 1982 property taxes, and

the Court having concluded, after taking evidence and hearing the arguments of the parties, that the application should be granted,

IT IS ORDERED granting the application for preliminary injunctions.

IT IS FURTHER ORDERED enjoining the defendants from taking any action to collect the second installment of 1982 property taxes which have been levied upon the rail transportation properties of the plaintiffs.

IT IS FURTHER ORDERED that a preliminary injunction in favor of the plaintiff Atchison, Topeka & Santa Fe Railroad Company shall issue upon the giving of security by that plaintiff in the sum of $10,000 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

IT IS FURTHER ORDERED that a pre-

liminary injunction in favor of the plaintiff Southern Pacific Transportation Company shall issue upon the giving of security by that plaintiff in the sum of $10,000 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The Court's findings of fact and conclusions of law are being prepared and will be filed shortly.

DATED this 29 day of April, 1983.

/s/ Charles L. Hardy
CHARLES L. HARDY
Judge of the United States
District Court

cc: all counsel of record

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.,	
Plaintiffs,	No. CIV 81-1279 PHX CLH
v.	No. CIV 82-1792 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	
SOUTHERN PACIFIC TRANSPORTATION COMPANY,	
Plaintiff,	No. CIV 81-1298 PHX CLH
v.	No. CIV 83- 185 PHX CLH
THE STATE OF ARIZONA, et al.,	(consolidated)
Defendants.	

MEMORANDUM OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiff railroad companies brought these actions to enjoin the defendants from valuing and assessing their rail transportation property for

ad valorem tax purposes in violation of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"), presently codified at 49 U.S.C. § 11503.[1]

The plaintiffs have applied for a preliminary injunction restraining the defendants from taking any action to collect the second installment of 1982 property taxes which have been levied upon their rail transportation properties, contending that Arizona's property tax assessment practices violate the 4-R Act. Payment of the second installment of the 1982 property taxes is due on May 2, 1983. A hearing has been held upon the application and it was taken under advisement. For the reasons hereinafter stated, preliminary injunctions will issue.

The discussion of the facts and the law in this memorandum shall be deemed the Court's findings of fact and con-

clusions of law required by Rule 52, Federal Rules of Civil Procedure.

I

THE 4-R ACT

Beginning in 1961, Congress conducted a prolonged inquiry into the taxation of railroad property by state and local governments. This inquiry produced substantial evidence of chronic discriminatory tax treatment caused by a combination of two tax assessment practices:

First, the true market value of railroad property and all other commercial and industrial property was overvalued and undervalued, respectively. This practice is known as de facto discrimination.

Second, the railroads were assessed at a percentage value that was higher than that of other commercial and industrial property. This practice is

known as de jure discrimination.

Arizona was cited as one of the states engaged in this type of discriminatory tax practice. See S. Rep. No. 1483, 90th Cong. 2nd Sess. 4 (1968).

In 1976, Congress passed the 4-R Act with the purpose of promoting the revitalization of the railroad industry by prohibiting discriminatory taxation of railroads by state and local government. State of Arizona v. Atchison, Topeka & Santa Fe Railway Co., 656 F.2d 398, 400 (9th Cir. 1981). The 4-R Act became effective in 1979, three years after its enactment. This delay was intended to give the states sufficient time to conform their tax statutes and assessment practices to the requirements of this new federal legislation. Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 865 (9th Cir. 1983).

The 4-R Act prohibits states and

their subdivisions from:

> (1) Assess[ing] rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

49 U.S.C. § 11503(b). It is further provided that the federal courts may remedy violations of the 4-R Act "if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11503(c). The 4-R Act indicates that the appropriate means of measuring discriminatory tax treatment is "through the random-sampling method known as a sales assessment ratio study (to be

carried out under statistical principles applicable to such a study)" if this form of proof is satisfactory to the court. Otherwise, the court shall find a violation if the assessment ratio of railroad property is higher than that of all other property in the assessment jurisdiction. 49 U.S.C. § 11503(c)(1).

II

ARIZONA'S PROPERTY TAXATION SCHEME

For taxation purposes Arizona groups property into eight classes. See A.R.S. § 42-136. Property falling into class 1 (flight property, standing timber, and mining property), class 2 (property of telephone and telegraph companies; gas, water and electric utility companies; and pipeline companies) and class 7 (property of railroads relating to their operations) is assessed centrally by the Arizona De-

partment of Finance. All other classes of property are assessed by the County Assessors.

In 1980, as a result of rulings in State of Arizona v. Atchison, Topeka and Santa Fe Railway Company, No. 78-655 (D. Ariz. Jan. 26, 1979), aff'd, 656 F.2d 398 (9th Cir. 1981), Arizona revised its tax statutes in an attempt to comply with the 4-R Act. For the year 1980, the assessment percentage for railroad property was 34 percent. Thereafter, the assessment percentage must equal the ratios which:

(a) The total assessed value for secondary tax purposes of all properties in classes 1, 2 and 3 (commercial and industrial property) bears to the total full cash value; and

(b) The total assessed valuation of all property for primary tax purposes in classes 1, 2 and 3 bears to the total limited value of such proper-

ty.[2] A.R.S. § 42-227B(7).

This statutory formula for determining an assessed valuation for railroad property that will comply with the 4-R Act rests upon two critical assumptions. First, the statute assumes that property in classes 1, 2 and 3 includes the entire range of "commercial and industrial property" as that term is used in the 4-R Act. Second, the statute assumes that the full cash value of all property in these three classes equals the true market value of the same property. Unfortunately the first assumption is wrong as a matter of law, and the second assumption is wrong as a matter of fact. In combination, these assumptions have caused the State of Arizona and its counties to violate the 4-R Act.

Acting on the assumption that the term "commercial and industrial property" included only classes 1, 2 and 3,

the director of the Department of Revenue assigned an assessment percentage of 33 percent to the railroad property for the year 1982. The State's method of calculating this assessment percentage may be summarized as follows[3]:

	Full Cash Value			Assessed Value
Class 1	982,305	x 52%	=	510,799
Class 2	7,831,979	x 44%	=	3,446,071
Class 3	10,904,957	x 25%	=	2,702,206
	19,719,241			6,659,076

$$\frac{\text{Assessed value}}{\text{Full cash value}} = \frac{6,659,076}{19,719,241} = .3377 \text{ (33\% in abstract)}$$

In granting the plaintiffs' motions for partial summary judgmen , however, this Court ruled that commercial and industrial property encompasses not only the property of classes 1, 2 and 3 but also leased residential property (class 6) and personal agricultural property (class 4). When these two types of property are considered, the ratio of assessed value to full cash

value of commercial and industrial property drops to 30 percent. This amendment of the State's method of calculating the assessment percentage may be summarized as follows[4]:

	Full Cash Value			Assessed Value
Classes 1, 2 & 3	19,719,241			6,659,076
Class 4	268,336	x 16%	=	43,041
Class 6	4,906,297	x 18%	=	879,949
	24,893,874			7,582,066

$$\frac{\text{Assessed value}}{\text{Full cash value}} = \frac{7,582,066}{24,893,874} = .3046 \text{ or } 30\%$$

These figures indicate de jure tax discrimination against the plaintiffs. The measure of discrimation is 3 percent, an amount which, alone, is not sufficient to invoke the remedial powers of this Court under the 4-R Act.

The second assumption of the assessment percentage formula for railroad property is that, for the purposes of determining the assessment ratio of

all other commercial and industrial property, the full cash value of commercial and industrial property equals the true market value of the same property. The parties stipulated that the full cash value of railroad property in Arizona is equal to its true market value. The parties also do not appear to dispute that the full cash values of other centrally-assessed properties (classes 1 and 2) are equal to their true market values. The issue is whether the locally-assessed commercial and industrial properties (primarily classes 3 and 6) are fully valued. To the extent the full cash value of commercial and industrial property does not equal its true market value, the assessment ratio of commercial and industrial property is diminshed and the degree of discrimination against the railroads is increased.

Arizona law, A.R.S. § 42-201(4)

states that "full cash value is synonymous with market value" and must be used "for the purpose of assessing, fixing, determining and levying secondary property taxes". However, data prepared by the State indicates that the full cash value of locally-assessed commercial or industrial property is only one-half its true market value.

Since the late 1970's, the Department of Revenue has prepared yearly a statewide full cash value statistical summary in an effort to measure the appraisal performance of county assessors. This summary compares the appraised values of property sold with their selling prices. Taking random samples of sales and eliminating those which do not appear to have been arm's length transactions, the statistician can locate the central tendency of the samples and thereby determine, in terms of a percentage, the average disparity

between the appraised values and the market values.[5]

The summary for 1982 indicates that the full cash value for locally-assessed real property invariably is substantially less than the true market value. If the central tendency is measured by the median of the sample, the disparity between the full cash value and the true market value of commercial and industrial property is 49 percent; if the weighted mean is used, this disparity is approximately 51 percent.[6] Combining this measure of *de facto* discrimination with the measure of *de jure* discrimination previously discussed, one can estimate, albeit roughly, that the assessment ratio of commercial and industrial property is 15 percent. This calculation may be summarized as follows:

$$\frac{\text{Assessed Value}}{\text{Full Cash Value}} = .3046 \ (30\%)$$

$$\frac{\text{Full Cash Value}}{\text{True Market Value}} = .489 \text{ (median) or } .515 \text{ (weighted mean)}$$

$$\frac{AV}{FCV} (.3046) \times \frac{FCV}{TMV} \begin{matrix} (.489) \\ \text{or} \\ (.515) \end{matrix} = \begin{matrix} .149 \text{ (median)} \\ \text{or} \\ .156 \text{ (weighted mean)} \end{matrix}$$

In conclusion, the data prepared by the State shows that the assessment of railroad property at a rate of 33 percent of full cash value would be a serious violation of the 4-R Act. The measure of discrimination being clearly more than 5 percent, this Court does have power under the 4-R Act to enjoin an attempt by the State to collect the railroad property tax due May 2, 1983.

III

THE PRECISE MEASURE OF DISCRIMINATION

Although the fact of a violation of the 4-R Act may be largely beyond dispute, the injunctive relief sought by the plaintiffs may not be issued with-

out a more precise measure of the discrimination. The railroads seek an injunction restraining the collection of all of the second installment of taxes owed. To date, the railroads have paid one-half of their 1982 tax liability based on an assessment percentage of 33 percent. If the assessment percentage for commercial and industrial property is less than one-half of 33 percent, then the amount of railroad property tax payable consistent with the 4-R Act has been fully paid in the first installment. Thus, the issue remains whether the median assessment percentage for commercial and industrial property is less than 16.5 percent.

The plaintiffs presented the testimony of Dr. Frederick Ekeblad, an expert in sales-assessment ratio studies and a veteran of 4-R Act litigation in other federal district courts. Relying on data used by the State to prepare

its full value statistical summary, Dr. Ekeblad performed an independent sales assessment ratio study. Identical in purpose to the State's summary, the sales-assessment ratio study is a statistical analysis of a random sample of ratios of assessed value to an indicator of market value. Dr. Ekeblad's study used the median to determine central tendency; weighted the data with weights proportional to the number of parcels in each legal class of property and each county; and included centrally assessed property or alternatively centrally-assessed property and personal agricultural property.[7] His study revealed that the median assessment percentage for commercial and industrial property, including centrally-assessed property, is 10.48 percent.[8] If personal agricultural property is included also, the median is 10.16 percent.[9]

The State and counties vigorously challenged the validity of Dr. Ekeblad's study primarily with two arguments.

1. Median Versus Weighted Mean

The State argued that a sales-assessment ratio study should use a weighted mean rather than a median to measure central tendency of a sample. The median is the middle ratio when the ratios are arrayed in order of magnitude. Because of this characteristic, the median is the selection of the average taxpayer or parcel transaction without regard to the dollar value of the property involved. The weighted mean is the arithmetic average of the ratios when each ratio is weighted by its corresponding sale price. Accordingly, the weighted mean assigns equal weight to each dollar value rather than to each parcel or taxpayer.

Although the median and weighted

mean have their own merits as measures of central tendency, this court is satisfied that the appropriate measure of central tendency in a sales-assessment ratio study for the 4-R Act is the median.[10] The congressional history indicates that Congress' intention was to measure the railroad's tax burden against that of the "hypothetical average taxpayer". State of Arizona v. Atchison, Topeka & Santa Fe Railway Co., 676 F.2d 398, 404 (citing S. Rep. No. 91-630, 91st Cong., 1st Sess. 10 (1969)). The median is clearly the measure of central tendency that best locates this average taxpayer, and it has uniformly received the approval of the courts in prior 4-R Act cases. Clinchfield Railroad Co. v. Lynch, No. 82-1049 (4th Cir. Feb. 3, 1983); The Atchison, Topeka & Santa Fe Railway v. Lennen, No. 80-4172 (D. Kan., April 15, 1982); AFC Industries, Inc. v.

State of Arizona, No. 82-59 (D. Ariz., May 26, 1982); Louisville and Nashville Railroad Co. v. Public Service Commission of Tenn., 493 F. Supp. 162 (M.D. Tenn. 1978).

2. The Reliability of the Sample

The Counties also argued that the sample of parcel transactions in some counties was so small as to be unreliable for the purposes of a sales-assessment ratio study. Dr. Ekeblad did concede that the sample size of some rural counties would be too small if used for only a sales-assessment ratio study of those counties individually. But as Dr. Ekeblad further noted, deficiencies in the size of the sample representing rural counties would not appreciably affect the proper location of the median for a state-wide sales-assessment ratio study.

In conclusion, Dr. Ekeblad's sales-assessment ratio study appears to

have been conducted with due regard for the statistical principles and standards relevant to such studies. This Court, therefore, accepts his study as clear and convincing evidence of the median assessment percentage of commercial and industrial property in Arizona. For purposes of the 4-R Act, a sales-assessment ratio study should include centrally-assessed property. Trailer Train Co. v. Lennen, supra; Clinchfield Railroad Co. v. Lynch, 527 R. Supp. 784, 788-89 (E.D.N.C. 1981), aff'd, No. 82-1049 (4th Cir., Feb. 3, 1983). When centrally-assessed property is included in the sample, Dr. Ekeblad's study indicates that the median assessment percentage for commercial and industrial property is 10 percent. The railroads, therefore, have clearly shown an adequate basis for seeking an injunction restraining the collection of all taxes due in their

second installment.

IV

THE PROPRIETY OF INJUNCTIVE RELIEF

The 4-R Act states that "[r]elief may be granted . . . only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property." 49 U.S.C. § 11503(c). This provision has been interpreted to mean that the court may grant injunctive relief upon a showing of a violation of the 4-R Act. Trailer Train Co. v. State Board of Equalization, supra; Atchison, Topeka & Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981).

The State and counties oppose the injunctive relief with two arguments.

1. Equitable Defenses

The counties argue that the Court should not issue an injunction in light of the equitable considerations in their favor. The counties presented evidence indicating that they will suffer financial hardship if the injunction is issued and the taxes of the railroad are not paid when due. In Trailer Train Co. v. State Board of Equalization, supra, at 868-69, however, the Ninth Circuit ruled that an injunction to stop a violation of the 4-R Act may be granted "without first requiring the establishment of the standard equitable prerequisites for such relief." Because the 4-R Act provides for equitable relief, the Court's discretion must be "exercised in light of the objectives of the Act." Atchison, Topeka & Santa Fe v. Lennen, 640 F.2d 255 (10th Cir. 1981). The equitable considerations raised by the defendants are, therefore, irrelevant. Id.;

Trailer Train Co. v. State Board of Equalization, supra; State of Tennessee v. Louisville and Nashville Railroad Co., 478 F. Supp. 199 (M.D. Tenn. 1979).

Even if equitable considerations were allowed to play a role in this decision, however, the injunction should not be denied on this basis. The counties may suffer budget deficits this year because they failed to anticipate the issuance of an injunction. But it cannot be argued seriously that the State and counties have not been put on notice that their tax practices have been discriminatory and would violate the 4-R Act when it came into effect. Moreover, the counties' responsibility for this violation of the 4-R Act is underscored by the fact that their appraisal practices clearly violate A.R.S. § 42-201(4), which requires that property be appraised at true market value. Had this legal mandate been

followed, the railroad's claim would be confined to the issue of de jure discrimination and no relief would be necessary.[11]

2. The Relevant Assessment Jurisdiction

The final argument of the State and counties is that the relevant assessment jurisdiction for a comparison of the assessment percentage of the railroads with that of commercial and industrial property should be the counties, not the State. The 4-R Act defines "assessment jurisdiction" as "a geographical area in a State used in determining the assessed value of property for ad valorem taxation." 49 U.S.C. § 11503(a)(2). In the context of the State's system of property assessment, this definition is ambiguous because railroad property and property in classes one and two are assessed centrally by the State, while all other

property is locally assessed by counties.

As the counties correctly point out, a ruling that the relevant assessment jurisdiction is the State threatens hardship to those counties that, by comparison to other counties, appraise commercial and industrial property closer to its true market value. When a state-wide median assessment percentage for commercial and industrial property is calculated, all counties contribute to this calculation, but the assessment practices of some counties may contribute more to a low median percentage than the assessment practices of other counties. A court order that enjoins taxation of railroads or directs the refund of taxes paid on the basis of a state-wide median assessment percentage, therefore, equalizes responsibility for the violation among the counties, causing hardship to those

counties with median assessment percentages higher than that of the state as a whole.

This argument notwithstanding, the Ninth Circuit has ruled that the relevant assessment jurisdiction is the entire state of Arizona. State of Arizona v. Atchison, Topeka & Santa Fe Railway Co., supra at 405. Although the interests of the counties do not appear previously to have been represented concerning this issue, the Ninth Circuit's ruling remains sound as a practical matter. The State and counties divide the responsibility for assessing property; nevertheless, the scheme for property assessment is state wide and subject to the control of the State. Thus, for the purposes of comparing centrally-assessed property such as the railroads against other commercial and industrial property, the entire state is the most efficient as-

sessment jurisidiction. Accord Atchison, Topeka & Santa Fe v. Lennen, No. 80-4172 (D. Kan. April 15, 1982).

Even though the State is the appropriate assessment jurisdiction, this Court could order relief on a county by county basis if sufficient evidence of the median assessment percentage of each county were provided. Evidence of Dr. Ekeblad's sales-assessment ratio study did not break the median assessment percentage down into the county levels. Because the State is the appropriate assessment jurisdiction, the plaintiffs did not have the burden of providing such evidence. Therefore, this Court is constrained to issue injunctive relief on the basis of a state-wide median assessment percentage. However, permanent relief will be ordered on the basis of median assessment percentages of each county if sufficient evidence is produced at trial

concerning this issue.

DATED this 2 day of May, 1983.

/s/ Charles L. Hardy
CHARLES L. HARDY
Judge of the United States
District Court

cc: all counsel of record

FOOTNOTES

1. Section 11503 was originally enacted as Section 306 of Pub. L. No. 94-210, 94 Stat. 54, Feb. 5, 1976, and was later recodified as part of the revised Interstate Commerce Act, Pub. L. No. 95-473, 92 Stat. 1337 (1978). Congress specifically provided that the recodification, while changing the language of some sections, was not intended to make any substantive change in the law. See Pub. L. No. 95-573, Section 31(a), 92 Stat. 1466.

2. The method for calculating the assessment percentage for primary tax purposes differs from that for secondary tax purposes only insofar as the assessed value of property is based on a percentage of limited property value rather than full cash value. For 1982, the limited property value is the full cash value as of 1979 plus increases in value up to 10 percent for each of the years 1980, 1981 and 1982. A.R.S. § 42-201.02. Neither party has raised the issue how this limited property value would affect measurements of discrimination under the 4-R Act. Evidence produced by the State indicates that the difference between full cash value and limited property value is not substantial, at least for the purposes of this application for a preliminary injunction, which requires only a showing that the 4-R Act has been violated. Therefore, the remainder of this opinion will assume that full cash value and limited

property value for real property are substantially the same. Accordingly, this Court's determination of the appropriate assessment percentage of commercial and industrial property value will be applicable for both primary and secondary tax purposes.

3. Exhibits 8 and 9.

4. Id.

5. Information regarding sales is obtained from affidavits of legal value recorded pursuant to A.R.S. § 42-1612. However, even though a sale may have been at arm's length, the sales price set forth in the affidavit may not necessarily represent the property's market value. The sales price may include items other than the real property itself and may also represent "creative financing." The department is currently conducting a study to determine the accuracy of the affidavits of value as indicators of market value. The defendants have tried to disparage the use of these affidavits as indicators of market value in their sales ratio analysis and that of the plaintiffs' expert, Dr. Ekeblad. However, these affidavits are regarded as the best starting point for determining actual market value, and their use appears to be widely accepted in sales ratio studies. See Exhibit 38. Their use, therefore, does not seriously diminish the reliability of the sales ratio analysis presented in this application for preliminary injunction.

6. Exhibit 6.

7. Exhibits 7, 14 and 37.

8. Exhibit 14.

9. Id.

10. This conclusion requires the Court to reject the testimony of Mr. Robert Gloudemans, director of the Department of Revenue's computer assisted appraisal unit, who testified that the proper assessment percentage for commercial and industrial property is 19.8 percent. See Exhibits 27, 28 and 35. His calculations assumed that the appropriate measure of central tendency was a weighted mean or alternatively a weighted median.

11. See Part II, Subsection 1, supra.